

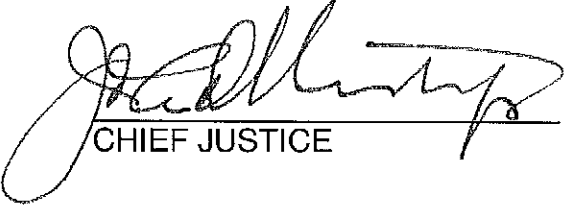
# Supreme Court of Kentucky

## ORDER

**IN RE: COURT RULES FOR PRETRIAL DIVERSION FOR THE 53<sup>RD</sup>  
JUDICIAL DISTRICT: ANDERSON, SHELBY, AND SPENCER  
COUNTIES**

Under KRS 533.262 and SCR 1.040(3)(a), and upon recommendation of the Judges of District Court, and being otherwise sufficiently advised: the Court Rules for the 53<sup>RD</sup> Judicial District Pretrial Diversion, attached hereto, are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this 15<sup>th</sup> day of May, 2009.

  
CHIEF JUSTICE

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## I. ELIGIBILITY REQUIREMENTS

- A. All persons charged in District Court with the commission of a misdemeanor shall be eligible for participation in the Administration Office of the Courts Pretrial Services Diversion Program (Program), as an alternative to criminal prosecution, subject to the following conditions and exceptions:
  - 1. A felony charge shall not be diverted.
  - 2. The County Attorney and the defendant must consent to participation in the Program. If the county attorney refuses to consent to a defendant's participation in the Program, he or she shall state on the record the reasons therefore.
  - 3. A person who has previously participated in a pretrial diversion program shall not be eligible for participation in the Program.
  - 4. Reasons of an extraordinary nature are presented.
- B. Nothing in rule shall be deemed to limit the authority of the county.

## II. PARTICIPATION

- A. Upon the consent of both the county attorney and the defendant, the trial judge shall approve participation in the Program for any individual who meets the eligibility requirements established in Section I above unless the trial judge, in his or her discretion believes that:
  - 1. There is a substantial risk that the defendant will abscond from the jurisdiction of the Court prior to fulfillment of the terms of the diversion contract.
  - 2. There is a substantial risk that the defendant will commit another crime prior to fulfillment of the terms of the diversion contract.
  - 3. The defendant is in need of correction treatment that can be provided most effectively by commitment to the county jail or a suspended jail sentence.

4. Participation in the Program would unduly depreciate the seriousness of the defendant's alleged crime.
- B. Upon approval for participation in the Program, the defendant shall sign a statement waiving his or her right to a speedy trial. Prior to signing such statement the defendant shall be given the opportunity to consult with an attorney if he or she so desires.
- C. Unless otherwise agreed in writing, participation in the Program shall not constitute an admission or presumption of guilt of the same crime charged; shall not be proof of guilt in any subsequent legal action.
- D. All Program records and all statements made by a defendant to the pretrial officer regarding the contract shall be privileged; shall not be admissible or discoverable for any purpose; shall be exempt from subpoena; and shall be deemed confidential. However, Program staff, the trial judge, and the chief district judge may access the information for purposes of Program review, monitoring and supervision. The information shall not be released to any other person or entity without prior written consent of the trial judge or the defendant. Nothing in this paragraph shall be deemed to prohibit release of information to the victim regarding a defendant's participation in the Program.
- E. The fee for participation in the Program shall be in the amount as established by the Administrative Office of the Courts. The pretrial officer may assess the fee on a sliding scale based upon ability to pay or waive the fee entirely in the case of indigence.

### III. THE DIVERSION CONTRACT

#### A. Referral to Pretrial Services

1. Upon referral to the Program, the defendant shall meet with a pretrial officer to establish a formal contract which specifies the court ordered conditions, the referral services to be used, the length of the contract, and, if required the need for the defendant to make restitution or perform community service. The Contract shall commence upon approval by the trial judge.
2. Following completion of the diversion contract, the pretrial officer shall submit a pretrial report and the contract for approval to trial judge. The report shall contain basic pretrial information, record of any past offenses and conviction, record of any prior participation in the diversion program or similar program, employment status,

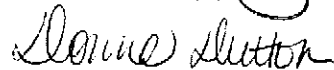
length of residence in the area, and any other information necessary to determine eligibility and appropriateness of approval to participate in the Program.

- B. Individual contract lengths shall be determined by the trial judge not to exceed 24 months.
- C. If the Program participant fails to comply with the conditions of the contract the pretrial officer shall refer the participant to the trial judge for a determination of either termination or modification. The trial judge shall enter an order reflecting said determination. As with the original diversion contract, the participant must agree to the contract modifications, if any, prior to reinstatement. Upon termination for non-compliance, the County Attorney may initiate prosecution of the defendant upon the original charge(s).
- D. A Program Participant may terminate the contract at any time by submitting a written statement to the diversion officer or the trial judge. Where termination is prior to expiration of the contract period, the diversion officer shall refer the case to the County Attorney for resumption of prosecution.
- E. Upon successful completion of the diversion contract, the charge subject to the contract shall be dismissed, and all official records shall bear the notation "dismissed as diverted." The administrative record shall not be expunged but, rather, will be retained in conformity with the Kentucky Court of Justice Records Retention Schedule.

Dated: \_\_\_\_\_



Judge, Linda S. Armstrong  
Chief District Judge  
Division One (1)



Judge, Donna Dutton  
Division Two (2)

HAVE SEEN AND APPROVED:



Office of General Counsel  
Administrative Office of the Courts